



Regulatory Advisory

February 2010



Advisory: 10-414

ENFORCEMENT OF THE IN-USE OFF-ROAD DIESEL VEHICLE REGULATION

The purpose of this advisory is to clarify regarding Air Resources Board policy on enforcement of the In-Use Off-Road Diesel Vehicle Regulation, and is being issued in coordination with ARB staff's continuing evaluation of the emission impact of current economic conditions. As part of that effort, in late summer 2010, the Board will consider additional amendments to both this regulation and the Truck and Bus Regulation that would be designed to provide additional regulatory relief to affected fleets while still achieving California's clean air commitments.

Enforcement Status

Because of the continuing effects of the economy on industries that use off-road diesel vehicles, in particular the construction industry, and because ARB currently lacks authorization from the United States Environmental Protection Agency to enforce certain aspects of the regulation, effective immediately, no enforcement action will be taken for noncompliance with the specific provisions of the regulation described in Item I below. In addition, during this enforcement delay, fleets will not be retroactively cited for non-compliance with these provisions. This enforcement delay will remain in place until U.S. EPA grants authorization to California to enforce all provisions of the regulation. At that time, ARB will provide fleets with up to an additional 6 months to comply with all requirements, as we've done previously with other regulations.

Please be advised that the provisions in Item II below remain in effect and are not subject to this enforcement delay. A more detailed description of the overall requirements of the regulation is provided later in this advisory.

I. Provisions Currently Not Enforceable

While authorization from U.S. EPA is pending, ARB will not be enforcing:

- Fleet average or Best Available Control Technology requirements (vehicle retrofit and replacement)
- Limitations on adding higher emitting Tier 0 and Tier 1 vehicles, and
- Requirements for new fleets to meet fleet average targets in order to enter California.

While no enforcement action on these provisions will be taken during this interim period, enforcement delay does not change the existing provisions of the regulation, nor does it change the current eligibility requirements of any available financial incentive programs. Fleets that accrue any compliance credits during this time will be permitted to retain those credits towards compliance with the regulation.

II. Provisions Currently Enforceable

While U.S. EPA authorization for certain elements is pending, enforcement of the following provisions will continue:

- Idling limits
- Reporting
- Labeling, and
- Sales disclosure requirement

These provisions remain in effect and are fully enforceable. This means that all fleets that have failed to submit an initial report to ARB are in violation of the regulation. Also, large fleets must still comply with the April 1, 2010, reporting deadline (i.e., still must report their fleet status, including any reduced activity and/or

reduced horsepower credits to ARB). This includes fleets that do not meet the regulation's emission performance standards.

Request for Enforcement Authorization

Under state and federal law, ARB currently has the authority to implement and enforce the idling, reporting, labeling and disclosure requirements of the regulation. However, under federal law, an authorization from U.S. EPA is required in order for ARB to enforce the emission requirements of the regulation, which include the March 1, 2010 large fleet requirements for retrofitting and replacing existing vehicles, as well as restrictions on fleets to add vehicles that do not meet certain emission standards. In August 2008, ARB submitted an authorization request to U.S. EPA, but as of this publication that request is still pending.

Regulation Background

The regulation was approved by ARB at a hearing on July 26, 2007, and is intended to significantly reduce emissions from off-road diesel vehicles that operate in California and have engines greater than 25 horsepower (hp) that are used to propel a vehicle and that are not used in agriculture. In general, the regulation requires vehicle owners to modernize their fleets by replacing engines with newer, cleaner ones (repowering), replacing vehicles with newer vehicles equipped with cleaner engines, retiring older vehicles, operating higher emitting vehicles less often (designating them as low-use vehicles) or by applying exhaust retrofits that capture and destroy pollutants before they are emitted into the atmosphere. These requirements can be met either by annually meeting increasingly stringent fleet average targets, or by applying Best Available Control Technology (BACT) to their vehicles. The regulation determines the date of compliance and the actions required based on the size of the fleet, splitting fleets into three categories: large, medium and small. The first compliance date for large fleets (those with over 5,000 hp) is March 1, 2010. The first compliance dates for medium and small fleets are 2013 and 2015, respectively.

The regulation also has limits on vehicle idling, disclosure requirements regarding the sale of off-road diesel vehicles subject to the regulation, and requirements for the reporting and labeling of affected vehicles. These requirements apply to all fleets, regardless of size, and are currently in effect.

The regulation has been amended several times to provide additional relief and credits to fleets by extending deadlines for fleet owners to obtain additional compliance credits for the early installation of exhaust retrofits, as well as the addition of new credits to provide relief to large fleets that have been adversely impacted by the current recession (either through the reduction in overall fleet hp or through a reduction in vehicle activity).

Non-Compliance

Fleets that have not yet reported or do not meet the labeling, disclosure or idling requirements of the regulation may be subject to enforcement action, including fines. Health and Safety Code, Sections 39674 (a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars or ten thousand dollars respectively for each day in which the violation occurs, which can be applied to each vehicle that is not reported.

For more information

To obtain a copy of the regulation or other related compliance assistance documents, visit the off-road knowledge center webpage <http://www.arb.ca.gov/msprog/ordiesel/knowcenter.htm> or contact the DOORS Hotline at 1-877.59DOORS or via e-mail at doors@arb.ca.gov. If you would like additional information regarding the enforcement of the off-road diesel regulation, please contact Mr. Eric Brown at 916-323-0166 or via e-mail at ebrown@arb.ca.gov.